

## **DISCLOSURE OF PROTECTED HEALTH INFORMATION TO BUSINESS ASSOCIATES AND OTHER CONTRACTORS PROCEDURE**

### **PROCEDURE:**

1. The **Privacy Official** or **Designee(s)** will review all current contracts with third parties to determine which parties are business associates, as defined in this policy.
2. Any contract which involves giving the contractor access to PHI must be referred to the Privacy Official or Designee(s) for review prior to execution or renewal, to ensure compliance with this policy. The Privacy Official or Designee(s) will include the **Designated Attorney or Designee(s)** in this review, as necessary.
3. The Privacy Official or Designee(s) will confer with the BBHMF employee who has responsibility for each business associate contract, and with the Designated Attorney or Designee(s), to determine what provisions need to be added to the contract to comply with this policy and with applicable state and federal law regarding the privacy and security of PHI.
4. The Privacy Official or Designee(s) will consult with the member of the BBHMF workforce who is primarily responsible for each business associate relationship to establish procedures to report material breaches of the business associate agreement. Material breaches will be reported to the Privacy Official or Designee(s) and to the Designated Attorney or Designee(s). When a material breach is reported, the Designated Attorney or Designee(s) will so inform the business associate. If the business associate fails to cure the breach to the satisfaction of the Designated Attorney or Designee(s) within 30 days, the Designated Attorney or Designee(s) will send notice of immediate termination of the agreement. If the Designated Attorney or Designee(s), in consultation with the member of the BBHMF workforce who is primarily responsible for the business associate relationship, determines that the agreement cannot feasibly be terminated in spite of failure to cure the breach, the Designated Attorney or Designee(s) will so notify the Secretary, federal Department of Health and Human Services (DHHS).
5. All findings and correspondence regarding a material breach of a business associate agreement will be retained for six years or longer if required by state law or regulation following the date such contract is terminated, or, if termination is not feasible, documentation must be retained for six years or longer if required by state law or regulation from the date that notice is sent to the Secretary, DHHS. Documentation will include a description of the reason or reasons why it is not feasible to terminate the contract.
6. All business associate contracts will be retained by the Designated Attorney or Designee(s) for a period of at least six years or longer if required by state law or regulation after the date when they are no longer in effect.

7. Existing contracts with entities that meet the definition of business associate must be executed prior to the publication of the Omnibus rule on January 25, 2013 and have one additional year beyond the September 23, 2013 compliance date for amendment to meet the requirements of this policy.
8. Existing contracts with entities that meet the definition of business associate and executed prior to January 25, 2013 that are not set to terminate or renew before September 23, 2013 must be amended to meet the requirement of this policy by the earlier of the renewal date or September 2, 2014.
9. Any new contract entered into between the BBHMF and a business associate on or after January 23, 2013 must meet the requirements of this policy by September 23, 2013.

**REFERENCE:** 45 CFR § 164.502(e) and 164.504(e); 67 FR 53264-53266;  
45 CFR § 164.308(b)

See also: ACCOUNTING OF DISCLOSURE OF HEALTH INFORMATION  
  
DE-IDENTIFIED INFORMATION  
  
LIMITED DATA SET  
  
PROVIDING MEDICAL INFORMATION TO FAMILY, FRIENDS OR  
OTHERS DIRECTLY INVOLVED IN THE MEMBER'S CARE OR  
PAYMENT  
  
TRAINING PROGRAM: USES, DISCLOSURES, AND SAFEGUARDING  
PROTECTED HEALTH INFORMATION  
  
TRADING PARTNER AGREEMENT  
  
IMPLEMENTING BUSINESS ASSOCIATE AGREEMENTS

Effective Date: 4/14/03  
Revised Dates: 9/23/13